

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Aquila, Inc.)	Application No. NG-0041
d/b/a Aquila Networks (Aquila),)	
Omaha, seeking individual rate)	ORDER DENYING MOTION TO
increases for Aquila's Rate Area)	STAY AND MOTION FOR
One, Rate Area Two, and Rate)	REHEARING
Area Three.)	
)	Entered: August 14, 2007
)	

BY THE COMMISSION:

On November 15, 2006, Aquila, Inc., d/b/a Aquila Networks (Aquila) filed an application seeking individual general rate increases for Aquila's Rate Area One, Rate Area Two, and Rate Area Three. Interventions were filed by Cornerstone Energy, Inc. (Cornerstone); Kinder Morgan, Inc., now known as SourceGas Distribution (SourceGas); and the Public Advocate.

On July 24, 2007, the Commission entered its Order Granting in Part Aquila's Application.¹ On August 1, 2007, Aquila filed a Motion to Suspend Rate Order (Motion to Suspend). On August 3, 2007, Aquila filed a Motion for Rehearing, Clarification, and Oral Argument (Motion for Rehearing). Finally, on August 7, 2007, the Public Advocate filed a Motion for Relief from Protective Order and Aquila filed its Brief in Support of Oral Argument on Rehearing (Brief).

Oral Argument was held on August 8, 2007 during which Aquila, SourceGas, and the Public Advocate each presented argument.

Preliminary Matters

Aquila included within its Motion for Rehearing and its Brief references to reports compiled by GDS & Associates (GDS), consultants retained by the Commission. The reports were completed in order to aid the Commission in the consideration of Aquila's Application. Additionally, Aquila has provided certain exhibits and information not previously included as evidence in the record, including but not limited to a document entitled "Rehearing Brief Exhibit A" and "Exhibit A" attached to Aquila's Motion for Rehearing.

With respect to the GDS Reports, in rendering its decision, the Commission considered only the evidence and testimony

¹ In the Matter of Aquila, Inc. d/b/a Aquila Networks (Aquila), Omaha, seeking individual rate increases for Aquila's Rate Area One, Rate Area Two, and Rate Area Three., Docket No. NG-0041, Order Granting Application in Part (July 24, 2007).

offered and received as evidence in this matter. The Order issued by the Commission on July 24, 2007 speaks for itself. The reports provided by GDS were tools utilized to aid in deliberations on the issues presented and are not intended and should not be used to explain or supplement the Order issued by the Commission. Furthermore, said reports do not constitute evidence or binding precedent in this or any other matter.

The additional exhibits and other evidence not previously offered by Aquila at the hearing on this matter and included in its Motion for Rehearing and Brief are also not part of the record and will not be considered by the Commission in rendering its decision.

Motion for Rehearing

In its Motion for Rehearing and attendant Brief, Aquila asks that the Commission reconsider its decision with respect to the following issues:

- a. Capital Additions
- b. Employee Healthcare Benefits
- c. Rate Design
- d. Rate Mechanisms and Energy Efficiency Rider
- e. Variable Compensation

In considering the Motion for Rehearing, one must consider the broad discretion given to the Commission. Pursuant to the State Natural Gas Regulation Act, Neb. Rev. Stat. § 66-1804(a) (2004 Cum. Supp.) (the Act), the Commission has "full power, authority and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction." The Legislature expressly intended that the powers granted to the Commission by the Act be "liberally construed."²

As a result of the plenary power conveyed by this section, the Commission possesses great flexibility in establishing procedures to carry out its statutory obligations, one of which is the regulation of rates charged by jurisdictional utilities.

The primary responsibility of the Commission in the regulation of rates is to establish "just and reasonable" rates

² "The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission." Neb. Rev. Stat. §66-1804(b).

that are neither "unreasonably preferential or discriminatory and shall be reasonably consistent in application to a class of ratepayers."³

"The commission, in the exercise of its power and duty to determine just and reasonable rates for natural gas public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the jurisdictional utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provisions for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property."⁴

a. Capital Additions

The Commission denied Aquila's request for a \$2,477,357.00 post-test year adjustment for capital additions and outlined the nature of the evidence Aquila should have presented. Aquila contends that the Commission erred in denying the post test year adjustment. Aquila points to several exhibits and references to testimony in support of its allegation that the Commission ignored or misinterpreted the evidence presented in favor of this adjustment. Aquila also contends that the Commission erred in determining that inclusion of the capital additions adjustment was within the Commission's discretion. Finally, Aquila argues that the Commission inappropriately imposed "new testimony requirements".⁵

Pursuant to Neb. Rev. Stat. § 66-1817,

(1) Any jurisdictional utility property **may** be deemed to be completed and dedicated to commercial service if construction of the property will be commenced and completed **in one year or less**.

(2) The commission **may** determine that property of a jurisdictional utility which has not been completed and dedicated to commercial service may be deemed to be **used and useful** in the utility's service to the public.

³ Neb. Rev. Stat. § 66-1825(1) (2003).

⁴ § 66-1825(3).

⁵ Aquila's Brief in Support of Oral Argument on Rehearing, p. 6 ¶7.

Rate base "**may** include items completed and dedicated to commercial service for which construction will be commenced and completed within one year or less from the end of the test year."⁶

With respect to this post-test year adjustment for construction in progress, the Commission clearly has discretion. The Commission did not, as Aquila seems to argue, find that the construction was completed within one year or less and then decide to disallow the adjustment. The Commission found the evidence on the adjustment insufficient.

The burden of proof and persuasion in this matter rests squarely with the utility. Aquila repeatedly argues that information and witnesses were made available. The utility further suggests that the Commission and the Public Advocate could have asked more questions if more information was needed to meet Aquila's burden of proof.⁷ Aquila also relies upon the fact that the Commission stated that it found no due process issue with respect to the evidence on this adjustment. Such statement by the Commission does not shift the burden to other parties. Ultimately, it was Aquila's responsibility to present evidence to support its requested adjustment.

The evidence referred to by Aquila in support of this adjustment was found to be insufficient. Specifically, in support of its contention that it presented evidence with respect to the adjustment in its direct case, Aquila refers to a single sentence in the cover letter accompanying its application which states, "Aquila has also made significant investments in the replacement and integrity of Aquila's system."⁸ Furthermore, Aquila relies upon a two sentence description of the adjustment in its "Summary of Adjustments" accompanying its Application.⁹ Aquila further points to general references to capital investment made by Steve Pella¹⁰ and a statement by Rich Petersen identifying a witness who was supposed to provide direct testimony regarding the adjustment but did not¹¹.

⁶ § 005.06D.

⁷ See Aquila's Brief in Support of Oral Argument on Rehearing, p. 6-8.

⁸ Rehearing Exhibit No. 1.

⁹ Rehearing Exhibit No. 2, stating "Capital additions for system integrity (relocations and replacement of existing mains and services due to their condition) will be expended during the second half of 2006 and the first half of 2007 construction season. It also include replacement of the Automated Meter Reading ("AMR") devices."

¹⁰ Rehearing Exhibit No. 3, Direct Testimony of Steve Pella, 4:1-4; 4:10-14; 10:15-20; and 11:1-4,6-16.

¹¹ Rehearing Exhibit No. 4, Direct Testimony of Richard Petersen, 6:7-9.

The evidence relied upon by Aquila in its Motion for Rehearing and Brief, including the various work papers, were reviewed by the Commission and specifically referred to in the Order.

Aquila bore the responsibility to give sufficient explanation of the data included in its filing and the record through direct and rebuttal testimony to support its adjustment. In attempting to provide parenthetical information to define certain abbreviations in its work papers, Aquila is, at least implicitly, acknowledging that some explanation was necessary. It is not incumbent on the Commission to decipher the internal work papers of a utility in order to ensure that the utility meets its burden of proof on a particular adjustment.

Aquila further contends that the Commission's order improperly imposes a new testimonial requirement. The Commission's order does nothing more than to give guidance for future rate filings regarding the nature and type of evidence that the Commission would have found sufficient. To argue that the Commission is not entitled to provide such guidance would strip Commission orders of precedential value.

The Commission denies Aquila's Motion for Rehearing with respect to the Capital Additions Adjustment.

b. Employee Healthcare Benefits

Aquila argues that the Commission erred in finding that insufficient evidence was presented with respect to its post test year adjustment in the amount of \$1,498,736 for employee healthcare benefits.

Although, Aquila provided rebuttal testimony indicating that it had experienced an actual increase of 19.2% in healthcare costs rather than the projected 14.8%, Aquila did not provide any supporting documentation as it did with the other payroll adjustments and updates. A blanket statement without any support offered on rebuttal is insufficient.

The Commission finds that it will not reconsider its decision on this adjustment.

c. Rate Design

The Commission established a residential customer charge of \$12.00 and a business customer charge of \$17.00. The remainder of the revenue requirement is to be collected in the volumetric delivery charge. Aquila contends that the rate design established by the Commission is confiscatory and not supported

by the evidence. Aquila further contends that the Commission may only choose between the rate design offered by the Public Advocate and the rate design offered by Aquila.

The Commission has two primary obligations in setting rates: to establish "just and reasonable" rates¹² and to balance the "public need for adequate, efficient, and reasonable natural gas service and ... the need of the jurisdictional utility for revenue sufficient to enable it to meet the cost of furnishing the service, ... and to earn a fair and reasonable return upon the investment in such property."¹³

The Commission clearly has the discretion to establish "just and reasonable" rates balanced with the utility's opportunity to earn sufficient revenue and a fair and reasonable return. To suggest that the Commission must take an "all or nothing" approach with respect to rate design is to fundamentally impair that discretion. The Commission clearly outlined that in establishing the customer and volumetric charges, it was balancing the proper price signals to the consumer encouraging conservation and to the utility encouraging efficiency. Furthermore, the law speaks of "revenue sufficient" to meet the costs of service, but does not dictate how that revenue must be collected. The traditional rate design maintained by the Commission's Order Granting Application in Part meets this statutory standard.

The Commission finds that the Motion for Rehearing should be denied with respect to the Rate Design.

d. Rate Mechanisms and Energy Efficiency Rider

The Commission denied Aquila's three (3) proposed automatic rate mechanisms: a weather normalization adjustment (WNA), a revenue normalization adjustment (RNA) and a limited cost recovery adjustment (LCR).

Aquila argues that the Commission erred in denying the proposed rate mechanisms in light of the evidence presented. Aquila further states that the energy efficiency program approved by the Commission would not be implemented unless at least one of the rate mechanisms were approved and therefore the Commission erred in approving the program in the absence of the rate mechanisms.

¹² Neb. Rev. Stat. § 66-1825(1) (2003).

¹³ § 66-1825(3).

In support of its argument that the Commission erred in denying all three mechanisms, Aquila refers to Docket No. NG-0031, in which Aquila originally proposed a limited cost recovery mechanism. The order referred to by Aquila specifically stated, "Aquila's proposal specifically seeks an overall increase to its revenue. As such, it fits squarely within the definition of a "general rate filing" and must be handled through the procedures set forth in § 66-1838. Aquila's application is, therefore, denied."¹⁴

The Commission went on to state, "Jurisdictional utilities are encouraged to continue to present rate proposals that minimize regulatory costs and increase efficiency. Such proposals must fit within the parameters of § 66-1808. The Commission is open to considering such requests."¹⁵

Being open to exploring creative alternatives in rate design does not require that a particular proposal be accepted. Further, the Commission in Docket No. NG-0031 did nothing more than direct Aquila to file its request in the proper forum so that the issue could be examined in the proper context. To do otherwise would be irresponsible on the part of the Commission. No guarantees for approval were made.

Institution of automatic rate mechanisms are solely a matter of public policy and completely within the discretion of the Commission. A cautious approach to such automatic adjustments in light of the recent history of natural gas rate regulation in Nebraska is entirely warranted, especially in light of Aquila's own testimony that only "20% of jurisdictions have decoupling/rate mechanisms".¹⁶ Therefore, the Commission finds that the Motion for Rehearing with respect to the rate mechanisms should be denied.

With respect to the approval of the Energy Efficiency program proposed by Aquila, the Commission finds that Aquila has the discretion to implement the program consistent with the requirements set forth in the July 24, 2007 Order. Should Aquila decide that it cannot do so without the availability of one of the automatic rate mechanisms, the Commission will not require Aquila to initiate the program.

e. Variable Compensation

¹⁴ *In the Matter of Aquila, Inc., d/b/a Aquila Networks (Aquila), Omaha, seeking authority for Limited Cost Recovery in the State of Nebraska*, Docket No. NG-0031, Order Denying Application, (November 1, 2005).

¹⁵ *Id.*

¹⁶ Aquila's Brief in Support of Motion for Rehearing, pg. 23, § 4B referring to the testimony of Paul Raab.

The Commission approved fifty-percent of the requested adjustment related to variable compensation. Aquila argues that the Commission's decision to exclude fifty-percent of the adjustment is arbitrary and that the full adjustment should have been approved based upon the evidence presented.

In approving fifty-percent of the adjustment, the Commission specifically found that the nature of the objectives appear to benefit both ratepayers and shareholders and it would be improper for the ratepayers to bear the full cost of this benefit. The Commission's finding was based upon evidence submitted by Aquila stating, "Aquila maintains a variable compensation or incentive pay plan for non-union employees, which is based on both the achievement of individual objectives and non-financial company objectives."¹⁷ The "non-financial" company objectives include "satisfactory customer service, service reliability, effective use of capital for projects, safety and to maintain or reduce Aquila's cost of service."¹⁸ In addition to the "non-financial" objectives, employees "also have objectives for individual projects related to their work responsibilities."¹⁹ No further detail regarding the incentive program was offered by Aquila. It is clear that these incentive programs are intended to benefit both the ratepayers and the shareholders.

The Commission was entirely within its discretion to disallow a portion of the expense. Therefore, the Commission denies Aquila's request to reconsider the Commission's finding that Aquila is entitled to an adjustment of fifty percent of the actual amount paid in March 2007 or \$106,455.00.

Motion for Clarification

Aquila has sought clarification regarding the following issues:

- a. Overall Revenue Requirement By Issue
- b. Contributions, Donations and Dues
- c. Consolidated Cost of Service
- d. Jurisdictional Cost Separation
- e. Postage

- a. Overall Revenue Requirement By Issue

¹⁷ Petersen, 8:20-22.

¹⁸ Petersen, 9:7-9.

¹⁹ Petersen, 9:10-11.

Aquila seeks clarification of the specific underlying categories that equate to the \$9.1 million revenue requirement increase. Attached as Exhibit A is a list detailing the disallowed items and associated dollar value.

b. Contributions, Donations and Dues

Aquila states it is unable to determine the permitted level of expense for contributions, donations and dues from the Order Granting Application in Part. The specific organizations to which contributions, dues and donations were sought and the corresponding amounts were treated as confidential under the Protective Order in this docket. The Public Advocate has since requested relief from such protection and such relief has been granted.²⁰ Availability of this information should enable Aquila to determine which items were allowed.

Additionally, Aquila requests clarification that the Commission is not disallowing fifty percent of costs that were prudently incurred, such as trade association dues. The Commission's order clearly found that it will only permit the requested fifty percent of the costs for each allowed item. As explained in the Commission's Order Granting Application In Part, "no expenses related to lobbying or legislative advocacy activity will be allowed. It is our understanding that any amounts attributable to lobbying and legislative advocacy activity have been excluded as part of the fifty percent factor adopted by Aquila."²¹ In a future rate case, Aquila may seek more than fifty percent, but should identify what portion, if any, of any given due or fee is attributable to lobbying or legislative advocacy.

c. Consolidated Cost of Service

The Commission's Order required that in the next rate case, Aquila address the reasons that a consolidated cost of service study, which would include Rate Areas 1 through 4, is not preferable to its Rate Area-specific cost allocation methodology.

Aquila requests clarification, indicating that Rate Area 4 is unregulated and that the affected rate areas are 1 through 3.

Although Rate Area 4 is not regulated, the apportionment of costs between regulated and unregulated customers is critical to

²⁰ Docket No. NG-0041, Order Granting Relief from Protective Order, August 14, 2007.

²¹ Order Granting Application in Part, p. 10.

proper assignment of costs. The Commission finds that the Order Granting Application in Part provides sufficient guidance for future rate cases.

d. Jurisdictional Cost Separation

Aquila requests clarification regarding the requirement that rate filing schedules in future rate cases include both total Nebraska amounts and the Commission's jurisdictional amount, and that test year adjustments should be made to both amounts as well. Aquila argues that non-regulated revenue is not subject to Commission jurisdiction and should not be required to be provided.

In the same vein as the discussion of Consolidated Cost of Service immediately above, the apportionment of costs between regulated and unregulated customers is critical to proper cost determinations. The Commission finds that the Order Granting Application in Part provides sufficient guidance for future rate cases.

e. Postage

Aquila asks for clarification on the level of approved or disallowed postage. As detailed in Exhibit A, the requested postage expense was decreased by \$17,282 for the reasons explained in the Commission's Order Granting In Part.

Motion for Stay

Aquila filed a Motion to Suspend Rate Order (Motion to Suspend) on August 1, 2007 requesting that the Commission stay the effectiveness of the July 24, 2007 order pending rehearing and judicial review.

The Commission, in order to ensure that Aquila had sufficient time to file an appeal to district court, held oral argument on the Motion for Rehearing well within the time for appeal. Aquila is entitled to further appeal this matter by "filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision," which in this case would be within thirty days after the service of the Commission's July 24, 2007 order. In light of the fact that Aquila's Motion for Rehearing has been resolved prior to the expiration of Aquila's time for appeal to the district court, the Commission finds that there is no need to stay the effectiveness of the order to allow sufficient time for rehearing. Furthermore, the Commission is required to enter

a final order on any general rate filing within 270 days.²² Should the Commission fail to do so, the rates requested would become final and no longer subject to refund.²³

Although Aquila cites to several general statutes governing rate orders issued by the Commission that would give the Commission authority to stay the enforcement of the rate order, the Commission is not convinced that those sections apply to such general rate filings by jurisdictional utilities.

Aquila instituted an interim rate as allowed by law. However, the interim rate is allowed only until "adoption of final rates".²⁴ Based upon the rates approved by the Commission, a refund is due to consumers based upon the July 24, 2007 order. Some level of mobility of rate payers on and off the system exists. The more time that elapses between the imposition of the interim rate and the institution of refunds, the more likely it is that the proper rate payers may not receive refunds to which they are entitled.

The Commission finds that the motion for a stay should be denied. The Commission further finds that the interim rates are no longer effective as of the effective date of the July 24, 2007 Order and rate payers are entitled to refund.

"The filing of the petition or the service of summons upon such agency shall **not** stay enforcement of a decision..."²⁵ Should Aquila wish to further appeal this matter, it may seek a stay of the order from district court.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Aquila's Motion for Rehearing is denied.

IT IS FURTHER ORDERED that Aquila's Motion for a Stay is denied.

IT IS FINALLY ORDERED that Aquila's Motion for Clarification is granted in part and the July 24, 2007 Order in this matter is amended as set forth herein.

²² Neb. Rev. Stat. § 66-1838(c).

²³ Neb. Rev. Stat. § 66-1838(15)(a).

²⁴ Neb. Rev. Stat. § 66-1838(10).

²⁵ The Administrative Procedures Act, Neb. Rev. Stat. § 84-917(3).

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. NG-0041

Page 12

MADE AND ENTERED at Lincoln, Nebraska this 14th day of August, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

David L. ...

Ann C. Boyle

Tim Schran

//s// Rod Johnson

//s// Frank E. Landis

Chairman

Rod Johnson

ATTEST:

Ad S Pollack

Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. NG-0041

Page 13

Exhibit A

Aquila
Summary of Commission Adjustments

		Rate Base			O&M	Deprn	Revenue Requirement
		Plant	A/Depr	Other RB			Impact
Adj 1	Capital additions	(12,776,870)	736,427		1,410	(737,837)	(2,477,357)
Adj #2	Offutt	(1,094,690)			(93,663)	(28,273)	(280,217)
Adj #5	Gas storage			(3,890,878)			(562,583)
Adj #15	Contributions & dues				(29,171)		(29,171)
Adj #18	Postage				(17,282)		(17,282)
Adj #6	Payroll				(739,983)		(739,983)
Adj #7	Variable comp				(106,455)		(106,455)
Adj #9	Economy of scale						
Adj #10	Merit						
Adj #16	Benefits				(1,498,736)		(1,498,736)
Energy efficiency		(13,871,560)	736,427	(3,890,878)	(2,483,880)	(766,110)	(5,711,785)
					Approx impact of return & taxes		(1,425,234)
							<u>(7,137,019)</u>

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
